

Supreme Court, U. S.
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IN THE
Supreme Court of the United States

No. **76-1276**

MORRIS RICHARD EDWARDS,
Petitioner,

vs.

WARDEN, KENTUCKY STATE PENITENTIARY,
Respondent.

**PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit**

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Respondent.

**PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
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The petitioner, Morris Richard Edwards, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Court of Appeals for the Sixth Circuit.

OPINION BELOW

The opinion of the Court of Appeals, not yet reported, is attached hereto.

JURISDICTION

The judgment of the Court of Appeals was entered on December 30, 1976. A petition for rehearing was denied on February 11, 1977. This petition is filed within thirty days of that date. This Court's jurisdiction is invoked un-

der 28 USC §1254. The district court's jurisdiction was invoked by indictment.

QUESTION PRESENTED

Whether in a state prosecution for offenses punishable by life imprisonment without possibility of parole, due process requires a pre-trial psychiatric examination upon defense request where evidence is presented including the assertions of the accused's mother and a psychiatrist tending to show organic brain damage and statements of defense counsel that the accused was not competent?

CONSTITUTIONAL PROVISIONS INVOLVED

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall

abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF FACTS

Petitioner Edwards, then 18 years old, was charged in Jefferson, Kentucky, Circuit Court, with rapes and other offenses against three women in two days. Shortly before trial, counsel moved for a psychiatric examination, supporting the motion with:

A—Counsel's assertions that they could not communicate with Edwards, who was "not functioning and obviously does not know what's going on." (T. 19)

B—An affidavit of Edward's mother showing possible brain damage as a result of:

- i. premature birth;
- ii. oxygen deprivation at birth;
- iii. consumption of amphetamines at age 2;
- iv. consumption of insecticide at age 3, with very high fever;
- v. a near-fatal overdose of heroin two years before trial.

The mother also related that Edwards had a learning disability, fear of being touched and fear of the dark, and asserted she believed he was mentally ill and unable to understand the proceedings. (Affidavit filed Sept. 19, 1972)

C—A psychiatrist (who had not examined Edwards and whose testimony came after trial had begun and the motion, denied on the foregoing showing, was renewed) who testified that the data in the mother's affidavit showed possible "organic brain disease," and that extensive further tests would be required for a proper diagnosis. (T. 225-226)

The court refused a continuance for psychiatric examination, denying also repeated motions for mistrial based on counsel's assertion that "there's no practical way that we can present an adequate defense at this time." (T. 318, 382-383) Edwards was convicted of multiple offenses and sentenced to life imprisonment without possibility of parole (having rejected a plea negotiation against counsel's advice). A new trial motion was rejected on this ground, and the Court of Appeals of Kentucky affirmed, *Edwards v. Commonwealth*, 500 S.W. 2d 396 (Ky. 1973).

Edwards filed a petition for habeas corpus in United States District Court for the Western District of Kentucky, which was denied, and the Court of Appeals for the Sixth Circuit affirmed and denied rehearing. This petition prays for review of the Sixth Circuit's affirmance.

REASON FOR GRANTING THE WRIT

DUE PROCESS OF LAW AS APPLIED IN THESE CIRCUMSTANCES ENTITLED THE DEFENSE TO A PRE-TRIAL PSYCHIATRIC EXAMINATION OF THE ACCUSED UPON THE REASONABLE GROUNDS TO BELIEVE THE ACCUSED WAS MENTALLY ILL SHOWN IN THE AFFIDAVITS AND TESTIMONY OF MR. EDWARDS' MOTHER, HIS COUNSEL, AND DR. BELL.

The issue presented has been before this court twice in recent years in closely similar circumstances, in *Pate v. Robinson*, 383 U.S. 375 (1966) and *Drope v. Missouri*, 420 U.S. 162 (1975).

In *Robinson*, the accused did not request a competency hearing, but proceeded to trial, arguing insanity as a defense; this Court, finding no waiver of the right to a pre-trial hearing in the failure to request it, held that Robinson's Constitutional right to a fair trial entitled him to a hearing on his competency.¹ The case was remanded with directions to discharge Robinson or retry him promptly, the Court finding that his competency at the first trial could not be determined at that remove of time. 383 U.S. at 387.²

Drope, supra, is similar but here this Court went beyond the *Robinson* decision and made clear that a com-

¹The Court alluded to bizarre conduct in Robinson's past, possibly resulting from a head injury at age seven or eight, but observed also that during trial Robinson appeared alert and understanding, saying: "While Robinson's demeanor at trial might be relevant to the ultimate decision as to his sanity, it cannot be relied upon to dispense with a hearing on that very issue." 383 U.S. at 382-385.

²Peculiarly, the *Robinson* decision does not appear to have come to the attention of either the trial court or the Kentucky Court of Appeals—at least neither court alluded to it, although it pre-dated Mr. Edwards' trial by several years.

petency hearing is an essential of due process whenever there is some reasonable evidence of incompetency albeit less persuasive evidence than was present in *Robinson*:

The import of our decision in *Pate v. Robinson* is that evidence of a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial are all relevant in determining whether further inquiry is required, but that even one of these factors standing alone may, in some circumstances, be sufficient. There are, of course, no fixed or immutable signs which invariably indicate the need for further inquiry to determine fitness to proceed; the question is often a difficult one in which a wide range of manifestations and subtle nuances are implicated. That they are difficult to evaluate is suggested by the varying opinions trained psychiatrists can entertain on the same facts. 43 L.Ed. 2d at 118.

Both *Robinson* and *Drope* were remanded for discharge or a new trial to be preceded by a competency hearing under applicable state law; the Kentucky rule, Rule 8.06 of the Rules of Criminal Procedure, provides (as did the Illinois and Missouri statutes in *Robinson* and *Drope* respectively) for a pre-trial competency determination, and makes a continuance for an examination and hearing mandatory when there are reasonable grounds for it. The *Robinson* and *Drope* opinions elevate this provision to the level of due process of law.

Here, as we have seen, the evidence of probable incompetence was strong. On at least four occasions Mr. Edwards experienced ordeals which may have caused brain damage (the deprivation of oxygen and other complica-

tions at birth; the consumption of amphetamines at age 2; the ingestion of insect poison at age 3; the near-fatal overdose of heroin only two years before trial). Secondly, his mother's affidavit revealed a history of irrational behavior. Third, Dr. Bell testified to the probable incompetence, and necessity for further examination. Finally, his attorneys repeatedly advised the court that Mr. Edwards did not understand the nature or seriousness of the proceedings, could not assist in his defense, could not communicate with counsel—was, in a word, incompetent. The trial judge's only response to all of this was his unwillingness to delay the proceedings.

The provisions of Kentucky Rule 8.06, designed as they apparently were to assure fair trials, surely required the competency determination in light of this record. And the due process doctrine of *Robinson* and *Drope* inescapably does so, even if the Rule itself did not. At least one Kentucky conviction (for murder) has already been reversed by the Supreme Court under *Drope*: *Jones v. Kentucky*, — U.S. —, 44 L. Ed. 2d 97 (No. 73-1884, April 28, 1975).

It deserves mention that the motion here was not one which would have caused any appreciable hardship to court, prosecution or public. Indeed, unlike for example the suppression of relevant but illegally obtained evidence, the examination prayed for would have added to the evidence upon which both the judge and (if Mr. Edwards were found competent to stand trial) the jury were to make their extremely important decisions. Thus the truth-finding process, as well as the pursuit of a fair trial would have been assisted by the examination. Moreover, the practical benefits of the pre-trial examination are obvious;

while in a given case such as this a brief pre-trial delay and nominal inconvenience might result, that very delay, first, might put to rest the need for any trial at all and, second, would foreclose the need for repeated post-trial proceedings on the issue such as have resulted in this very case.

Finally, where as here a young man is exposed to being (and now in fact is) condemned to spend the rest of his life, without possibility of parole, imprisoned, for conduct so bizarre and unnatural (three sexual assaults in a space of less than three weeks, two of them on one day) as of itself to suggest mental imbalance, the necessity of a psychiatric evaluation is not only the more obvious but the more poignant. There was nothing appreciable to lose from the examination and so very much to gain that if *Drope* and *Robinson* have any force they must be designed for precisely such circumstances as these.

CONCLUSION

For these reasons, Petitioner prays that a writ of certiorari issue to review the judgment and opinion of the Sixth Circuit.

Respectfully submitted,

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Dated March 8, 1977.

APPENDIX

No. 76-1945

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MORRIS RICHARD EDWARDS,
Petitioner-Appellant,
vs.

WARDEN, KENTUCKY STATE PENITENTIARY,
Respondent-Appellee.

ORDER

Before PHILLIPS, Chief Judge, and PECK and ENGEL, Circuit Judges.

Morris Richard Edwards, the appellant, was found guilty by a jury in the Circuit Court of Jefferson County, Kentucky, on two counts of rape, indecent and immoral practices and buggery. His conviction was affirmed by the Court of Appeals of Kentucky. *Edwards v. Commonwealth*, 500 S.W. 2d 396 (Ky. 1973). The petition of Edwards for a writ of habeas corpus was denied by Chief District Judge Rhodes Bratcher of the Western District of Kentucky in a memorandum opinion entered May 10, 1976.

On appeal Edwards contends that he was deprived of his due process right to a fair trial because of the failure of the trial court to grant him a pretrial psychiatric ex-

amination, in view of substantial evidence of a serious mental disability.

We agree with Judge Bratcher that the facts of the present case are distinguishable from those in Drope v. Missouri 420 U.S. 162 (1975), and Pate v. Robinson, 383 U.S. 375 (1966). We conclude that the decision of the District Court is correct.

Accordingly, it is ORDERED that the judgment of the District Court be and hereby is affirmed.

Entered by order of the court.

/s/ JOHN P. HEHMAN
Clerk

ORDER DENYING PETITION FOR REHEARING

Before PHILLIPS, Chief Judge, and PECK and ENGEL, Circuit Judges.

No judge of the court having moved for rehearing en banc, the petition for rehearing has been assigned to the original hearing panel.

Upon consideration, the court concludes that the petition is without merit.

Accordingly, it is ORDERED that the petition for rehearing be and hereby is denied.

Entered by order of the court.

/s/ JOHN P. HEHMAN
Clerk

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MORRIS RICHARD EDWARDS PETITIONER,

VS.

WARDEN, KENTUCKY STATE
PENITENTIARY RESPONDENT.

**BRIEF FOR RESPONDENT IN OPPOSITION
TO A PETITION FOR A WRIT
OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

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IN A STATE PROSECUTION FOR RAPE,
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QUESTION PRESENTED

IN A STATE PROSECUTION FOR RAPE, WERE
THE DUE PROCESS RIGHTS OF THE PETITI-
ONER VIOLATED BY THE TRIAL COURT'S
REFUSAL TO ORDER A PRETRIAL PSYCHIA-
TRIC EXAMINATION OF PETITIONER?

COUNTERSTATEMENT OF THE FACTS

Petitioner Edwards, hereafter Edwards, was charged in Louisville, Jefferson County, Kentucky, in the Jefferson Circuit Court with three counts of Rape. Trial began September 18, 1972. On September 15, 1972, at a

pretrial motion hearing, Edwards' counsel requested a psychiatric examination of the *prosecuting witnesses*, which was overruled. No motion was made for a psychiatric examination of Edwards.

On trial date, September 18, 1972, Edwards' counsel, in chambers, advised the court that Edwards had been offered in plea bargaining a recommendation of a sentence of twenty (20) years, but that Edwards had rejected this offer and desired a jury trial. The trial judge heard personally from Edwards that he was aware of the offer but had declined the recommendation and chose to go to trial.

On September 19, 1972 when testimony was to be heard, Edwards' counsel, for the first time, moved to postpone trial and requested that Edwards be examined by a psychiatrist. His motion was accompanied by an affidavit of Edwards' mother, Anna Louise Edwards, that her son was a premature baby, that there were complications during delivery, at age two he swallowed amphetamines, at age three he received an overdose of bug spray, that his reading comprehension was at a first or second grade level, that two years prior to trial Edwards overdosed on heroin and that in his mother's opinion, Edwards suffered from brain damage which would prevent his understanding the charges against him.

Edwards' counsel, by affidavit, also advised that in his opinion Edwards suffered from brain damage because Edwards refused to accept the Commonwealth of Kentucky's offer of twenty (20) years imprisonment, and thereby such refusal indicated he lacked understanding of the nature of the charges against him.

The prosecutor advised the court that Edwards' parents had consulted with the police court judge prior to examining trial but never discussed his mental condition.

The trial judge refused to postpone trial and order a psychiatric examination on the grounds that there were insufficient facts present to indicate reasonable grounds for delaying trial and appointing a psychiatrist. The trial judge did leave the question of mental competency open should additional evidence develop during the trial.

On September 20, 1972, in chambers, Edwards put on a Dr. Bell, a psychiatrist, who testified that he never examined Edwards, but based upon the affidavit of Edwards' mother, alone, it was his opinion that the assertions of the mother's affidavit could be associated with organic brain disease. The court refused to postpone the trial.

During the trial, Edwards' wife testified that she had gone through grade school and into high school together with him and that he seemed like an ordinary person and there was nothing wrong with him physically or mentally.

The jury was given an insanity instruction. The jury found Edwards guilty of the three rapes, did NOT find him insane, and sentenced him to life imprisonment without parole.

Edwards appealed his conviction, which was affirmed and reported as *Edwards v. Commonwealth*, Ky., 500 S.W. 2d 396 (1973). He filed a petition for a writ of

habeas corpus in the United States District Court, Western District of Kentucky at Louisville, which was denied. He appealed to the United States Circuit Court of Appeals, Sixth Circuit at Cincinnati, and that Court affirmed the district court's denial of the writ. He now seeks a petition for a writ of certiorari in this Court.

REASON FOR DENYING THE WRIT

Edwards seeks to convince this Court that the facts of his case are similar to those which led to the decisions in *Pate v. Robinson*, 383 U.S. 375, 86 S. Ct. 836, 15 L.Ed. 2d 815 (1966), and *Drope v. Missouri*, 420 U.S. 162, 95 S. Ct. 896, 43 L.Ed. 2d 103 (1975). The facts in the latter two cases are entirely different than those found in this case.

In *Pate v. Robinson*, supra, the defendant was violent at his trial and had to be strapped in a wheel chair during the trial. He imagined he heard voices, saw animals — snakes and elephants. Four witnesses testified Robinson was insane and there was ample evidence of his erratic behavior at time of trial.

In *Drope v. Missouri*, supra, a psychiatrist's report was submitted with the motion to have the defendant examined. His (the defendant's) wife related bizarre activity. The defendant shot himself while on trial, and the court proceeded to hear the case in the defendant's absence.

The facts here are entirely unlike those in *Robinson* and *Drope*.

Here, there is merely a last minute trial tactic of

defense counsel to continue the trial, perhaps to allow counsel time to persuade Edwards to reconsider the offer of the prosecution in plea bargaining. The trial judge had before him an affidavit of Edwards' mother and Edwards' counsel. One said she suspected him of brain damage because of early events in his childhood. (Such events are normal occurrences in many children). There was no substantial evidence presented that Edwards was not cognizant of the charges then pending or that he could not rationally participate in his defense at trial. The psychiatrist's testimony during trial is worthless. He never examined Edwards. He only examined Edwards' mother's affidavit and gave his opinion that based upon said affidavit, the facts related therein could possibly be associated with brain damage syndrome — not that Edwards, at time of trial, was not sufficiently oriented to stand trial or to participate in his defense.

The facts of Edwards' early life were given to the jury and it refused to find him insane. Edwards' wife testified he was normal and she knew him through grade and high school years before she married him.

The trial judge correctly determined that there were insufficient reasonable grounds present to postpone trial and order a psychiatric examination. To our knowledge, to this date, there has been no attempt to declare Edwards incompetent.

No due process rights have been violated here; in fact, they have been scrupulously observed. Edwards has had more than his day in court; he has had many days in court.

CONCLUSION

The trial court was justified in refusing to conduct a psychiatric examination of Edwards, and his refusal to do so did not violate Edwards' constitutional right to Due Process of Law under the Fourteenth Amendment to the Constitution of the United States. Certiorari should be denied.

Respectfully submitted,

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PROOF OF SERVICE

I certify that a true copy of the foregoing Brief of Respondent in Opposition to a Petition for a Writ of Certiorari was served on Honorable Jack S. Nordby, Thompson, Nordby and Peterson, Suite 1530 - East Fifth Street, Saint Paul, Minnesota 55101, Counsel for Petitioner, by mailing, Postage prepaid, on this 13th day of April, 1977.



Martin Glazer
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